

Report to Overview and Scrutiny Committee

Date of meeting: 6 March 2012

Portfolio: Environment

Subject: Defra consultation on waste related penalties

Officer contact for further information: J Gilbert

Committee Secretary: A Hendry



Recommendations/Decisions Required:

To consider the attached responses to the Defra consultation

Report:

Background

1. When the new government came to power, it stated that it intended to review waste related law on the premise that too many local authorities were unnecessarily penalising residents for what were seen as trivial offences resulting in those residents receiving a criminal record. Furthermore, government took the view that the threat of a criminal record was being utilised to cajole residents to comply with draconian waste related powers.

2. This all made for some interesting newspaper headlines, with stories of penalties, convictions and threats for offences such as failing to close the lid of a wheeled bin to putting out side waste. This, alongside the move towards alternate weekly collections has been seen as councils not serving their public and being unnecessarily heavy handed rather than attempting to convince and educate.

3. Government has now come forward with its proposals for changing the law. It is presenting two main options:

- (1) the creation of mainly civil sanctions, but with the retention of some criminal sanctions; and
- (2) the removal of all criminal sanctions.

The consultation is appended to this report. The deadline for response is the 9th of March 2012.

This Council's position

4. There is no doubt that some councils take and have taken a more robust line with their residents in respect of relatively minor waste offences. Such offences include, amongst others, lids not fully closed, bins not placed out in correct location, side waste etc. This Council has always taken a different view. Firstly, the Council provides a weekly collection of food and garden waste. This enables residents to dispose of putrescible waste on a weekly basis. Secondly, the Council's adopted enforcement policy makes it clear that, prosecution (or its equivalent), should be seen as the last resort and only applied for the most serious breaches or in circumstances where all other avenues of advice and persuasion have failed to deliver reasonable behaviour.

5. This approach has worked and the Council has both a high level of overall recycling (around 60%) and has not issued many fixed penalty notices or taken other legal action for offences relating to household waste. That said, officers are of the view that some form of sanction is required to deal with residents who won't meet reasonable requests to change their approach or actually commit what are considered to be serious offences. Offences and the action taken are regularly reported to the Safer, Cleaner, Greener Standing Scrutiny Panel and via the Members' Bulletin.

6. In attempting to answer the consultation questions posed, it has been difficult to advise Members unequivocally in favour of one of the options. It would have been easier to favour option 1, which is effectively the status quo with additional protections built in. However, option 2, the decriminalised approach, is being suggested as the preferred option, because, irrespective of whether there has been over zealousness by some councils, it is questionable whether a resident should be at risk of being tarnished with a criminal record because they did not close a wheeled bin lid or accidentally placed the wrong waste into the wrong container.

7. If option 2 is seen as a preferred way forward, then the questions are whether civil enforcement is sufficient to deal with the problems which arise and whether it is practical and/or financially viable for councils to pursue civil debts. It can be argued that it works for parking offences, although adverse publicity on this matter far exceeds anything which has arisen from waste. However, provided that fixed penalty notices are only issued when they should be, and councils do not see the income stream from civil penalties as a key source of guaranteed income, then there is no reason why this should not work.

8. It will be important however to ensure that the criminal powers which remain are fit for purpose and do enable councils to take action where appropriate through the Courts. It will be equally important for councils not to find themselves under criticism for seeking to recover those civil debts which arise from the issue of a fixed penalty notice. The Council pursues its parking debts assiduously and should behave similarly with waste related civil debts.

The proposed response

9. The proposed answers to the consultation questions are set out in the attached table. For the reasons set out above, the answers are not always as unambiguous as would be wished for. However, it is hoped that the Council's general approach is properly stated.

Reason for decision:

To respond to the Defra questionnaire before the deadline date of the 9th of March 2012.

Options considered and rejected:

(1) To select option 1 as the Council's preferred option. This is a perfectly valid approach, but not recommended for the reasons set out in the above report;

(2) To amend, add or delete the answers suggested in the attached table.

Consultation undertaken:

None

Resource implications:

Budget provision: Within existing resources and suggested response will not have a budgetary impact
Personnel: Within existing
Land: Nil

Community Plan/BVPP reference:
Relevant statutory powers:

Background papers:
Environmental/Human Rights Act/Crime and Disorder Act Implications:
Key Decision reference: (if required)